95-1157 (1)

NO. _____

Supreme Court, U.S.
FILED
NOV 22 1995
CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

Douglas McPherson, In Propria Persona,
Petitioner,

v

JAMES H. BRICKLEY, CHARLES L. LEVIN, MICHAEL F. CAVANAGH, PATRICIA J. BOYLE, DOROTHY COMSTOCK RILEY, CONRAD L. MALLETT, JR., ELIZABETH A. WEAVER: Judges of the Michigan Supreme Court; DONALD E. HOLBROOK, KATHLEEN JANSEN, PETER D. O'CONNELL: Judges of the Michigan Court of Appeals; THOMAS S. EVELAND, G. MICHAEL HOCKING: Judges of the Fifty-Sixth Judicial Circuit Court of Michigan; and, JUDITH E. MCPHERSON, (jointly and severally),

Respondents.

Petition for Writ of Certiorari
to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Douglas McPherson, In Propria Persona
16718 Ingersoll Road
Lansing, MI 48906
(517) 321-6201

FRANK J. KELLEY, MICHIGAN ATTORNEY GENERAL
DONALD S. MCGEHEE (P37489)
Counsel of Record for Respondent State Judges
P.O. Box 30217

33 pp

Lansing, MI 48909
(517) 373-6096

CATHERINE A. JACOBS (P32996)
Counsel of Record for JUDITH E. MCPHERSON
232 S. Capitol Ave., Suite 1000,
Lansing, MI 48933
(517) 482-2400

QUESTIONS PRESENTED FOR REVIEW

1. SHOULD THE STATE'S JUDICIAL RULINGS DENY LIBERTY RIGHTS "*IN ERROR OF THE LAW*" CONTRARY TO CONSTITUTIONAL, CASE, AND NON-DISCRETIONARY STATUTE LAW?

2. SHOULD THE STATE'S SUPREME COURT DENY APPELLATE REVIEW OF JUDICIAL RULINGS THAT ARE "*IN ERROR OF THE LAW*"?

3. SHOULD THE STATE DENY EQUAL PROTECTION BY NOT ENFORCING ONGOING LIBERTY RIGHTS?

4. DOES PETITIONER HAVE THE RIGHT TO A "*REASONABLE EXPECTATION*" THE FEDERAL GOVERNMENT WILL VINDICATE CONSTITUTIONAL RIGHTS BEING VIOLATED BY THE STATE?

5. SHOULD THE FEDERAL GOVERNMENT MITIGATE THE "*FUTURE DAMAGE TO OTHERS*" OF UNCONSTITUTIONAL STATE JUDICIAL DECISIONS, DENIAL OF APPELLATE REVIEW AND NON-ENFORCEMENT OF ONGOING LIBERTY RIGHTS?

PARTIES TO THE PROCEEDING

Petitioner, Douglas McPherson, is a resident of Clinton County, Michigan. He was Defendant in the state trial court, Appellant in the Michigan Court of Appeals and Michigan Supreme Court. He appears "In Propria Persona", asking that his submittals to this Court not be held to the same standard as an attorney at law, and requests to be furnished any assistance he is entitled to under law.

Respondents JAMES H. BRICKLEY, CHARLES L. LEVIN, MICHAEL F. CAVANAGH, PATRICIA J. BOYLE, DOROTHY COMSTOCK RILEY, CONRAD L. MALLETT, JR., ELIZABETH A. WEAVER, are Judges of the Michigan Supreme Court who denied Petitioner appellate review (Appendix A).

Respondents DONALD E. HOLBROOK, KATHLEEN JANSEN, PETER D. O'CONNELL, are Judges of the Michigan Court of Appeals, whose Order (exhib t Appendix B) affirmed the state trial court.

Respondents THOMAS S. EVELAND and G. MICHAEL HOCKING are Judges of the Fifty-Sixth Judicial Circuit Court of Michigan, who issued the state trial court Orders (Appendix C, D).

Respondent, JUDITH E. MCPHERSON is a resident of Eaton County, Michigan, the Plaintiff in the state trial court, and Appellee in both the Michigan Court of Appeals and the Michigan Supreme Court.

There are no other parties to this action.

TABLE OF CONTENTS

page

Questions Presented for Review..... i
Parties to the Proceeding..... ii
Table of Contents..... iii
Table of Citations..... iv, v
Opinions Below..... 2
Statement of Jurisdiction..... 2
Statutes Involved..... 3
Statement of the Case..... 3
Reasons for Granting the Writ..... 13

I. THE STATE'S JUDICIAL RULINGS DENY LIBERTY RIGHTS "*IN ERROR OF THE LAW*" CONTRARY TO CONSTITUTIONAL, CASE, AND NON-DISCRETIONARY STATUTE LAW..... 13

II. THE STATE SUPREME COURT DENIED APPELLATE REVIEW OF JUDICIAL RULINGS THAT ARE "*IN ERROR OF THE LAW*"..... 14

III. THE STATE DENIES EQUAL PROTECTION BY NOT ENFORCEING ONGOING LIBERTY RIGHTS..... 14

IV. PETITIONER HAS A "*REASONABLE EXPECTATION*" THE FEDERAL GOVERNMENT WILL VINDICATE CONSTITUTIONAL RIGHTS BEING VIOLATED BY THE STATE..... 14

V. THE FEDERAL GOVERNMENT SHOULD MITIGATE THE "*FUTURE DAMAGE TO OTHERS*" OF UNCONSTITUTIONAL STATE JUDICIAL DECISIONS, DENIAL OF APPELLATE REVIEW AND NON-ENFORCEMENT OF ON GOING LIBERTY RIGHTS..... 15

Conclusion..... 16
Appendix 18

TABLE OF CITATIONS

Cases Cited: page

Armstrong v Manzo, 380 U.S. (1965)..... 10
Bell v City of Milwaukee, 746 F.2d;
S.C. Ct. App 7th Circuit (1985)..... 4
Carey v Population Servs. Int'l,
431 U.S. (1977)..... 4
Carsen v Elrod, 411 F.Supp. U.S. Dist.
Ct. Eastern Dist. Virginia 1976..... 4
Cleveland Board of Education v LaFleur,
414 U.S. (1974)..... 3
Doe v Irwin, 441 F. Supp. 1247, U.S.
Dist. Ct. of Michigan (1977)..... 4
Duchesne v Sugarman, 566 F.2d..... 10
Ginsberg v New York, 390 U.S. (1968)..... 10
Gordon v Gordon, 13 Tulsa L.J. 802..... 8
In Interest of Cooper, 621 P.2d,
5 Kansas App. Div. 2d (1980)..... 4
Kelson v Springfield, 767 F.2d;
U.S. Ct. App. 9th Circuit (1985).... 12
Langton v Maloney, 527 F.Supp.; U.S.
Dist. Ct. Connecticut, (1981)..... 9
Lassiter v Dept. of Social Services,
452 US, 101 S.Ct., L.Ed. 2d.(1981).. 8
Lehr v Robertson, 463 U.S. (1983)..... 12
Mabra v Schmidt. 356 F.Supp.; U.S.
District Ct. Wisconsin (1973)..... 4,10
Mann v Mann, 190 Mich App..... 6, 8
Matter of Delaney, 617 P.2d
Oklahoma (1980)..... 4
May v Anderson, 345 U.S. 73 S.Ct(1952)... 5
Meyer v Nebraska, 262 U.S. (1923)..... 3,10
Moore v City of East Cleveland,
431 U.S. (1977)..... 3
Parham v J.R., 442 U.S. (1979)..... 10
Pierce v Society of Sisters,
268 U.S. (1925)..... 3,10
Prince v Massachusetts, 321 U.S. (1944)..3,10
Quilloin v Walcott, 434 U.S. (1978)..... 3

TABLE OF CITATIONS - Continued

Roe v Wade, 410 U.S. (1973)..... 4
Rozek v Rozek, Mich. CA 157262,(1993).... 8
Ruffalo v Civiletti, 539 F. Supp.
(W.D. Mo. 1982)..... 9
Santosky v Kramer, 102 S Ct;
455 US (1982)..... 3, 5, 8, 11, 12
Schwiesow v Schwiesow, 406 NW Rep
2d 878; 159 Mich App 548..... 8
Shapiro v Thompson, 394 U.S..... 11
Sherbert v Verner, 374 U.S. (1963)..... 11
Skinner v Oklahoma, 316 U.S. (1942)..... 3
Smith v Organization of Foster
Families, 431 U.S. (1977)..... 3
Speiser v Randall, 357 U.S. (1958)..... 12
Stanley v Illinois, 405 US, 92 S.Ct.,
31 L.Ed. 2d. (1972)..... 3, 8,10
Stringer v Vincent, 161 Mich App,
411 NW 2d (1987)..... 8
United States v Jackson, 390 U.S.(1968).. 11
Wisconsin v Yoder, 406 U.S..... 10
Wise v Bravo, 666 F.2d (10th Cir. 1981).. 9
Wolfe v Howatt 119 Mich App 10 (1982)... 8
Zablocki v Redhail, 434 U.S. (1978)..... 3

U.S. Constitution, statutes, etc., Cited:

Amendment I..... 3, 4, 9, 14,A-8
Amendment V..... 3, 9, 14,A-8
Amendment IX..... 3, 9, 14,A-8
Amendment XIV..... 3, 4, 9, 12, 14,A-8
28 U.S.C. 1254(1) 2
28 U.S.C. 1257 ..... 2,A-7
28 U.S.C. 1331 3
28 U.S.C. 1343 3
MCL 722.27..... 7
MCR 2.517..... 7
MSA 25.312(7)(c)..... 7
"*Future Damage to Others*" doctrine..... 15

NO. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1995
Douglas McPherson, In Propria Persona,
Petitioner,

v

JAMES H. BRICKLEY, CHARLES L. LEVIN, MICHAEL F. CAVANAGH, PATRICIA J. BOYLE, DOROTHY COMSTOCK RILEY, CONRAD L. MALLETT, JR., ELIZABETH A. WEAVER: Judges of the Michigan Supreme Court; DONALD E. HOLBROOK, KATHLEEN JANSEN, PETER D. O'CONNELL: Judges of the Michigan Court of Appeals; THOMAS S. EVELAND, G. MICHAEL HOCKING: Judges of the Fifty-Sixth Judicial Circuit Court of Michigan; and, JUDITH E. MCPHERSON, (jointly and severally),

Respondents.

Petition for Writ of Certiorari
to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Douglas McPherson, petitions for a writ of certiorari to vacate the judgment of the Michigan Supreme Court, August 28, 1995; Michigan Court of Appeals, May 23, 1995; and the Michigan Trial Court, December 27, 1993. Petitioner also requests other relief as described in the CONCLUSION of this petition.

OPINIONS BELOW

The Michigan Supreme Court Order (Appendix A), August 28, 1995, denied appellate review of the Michigan Court of Appeals Order (Appendix B), May 23, 1995, and the Michigan trial court Order (Appendix C), December 27, 1993. This state trial Court earlier issued an "*ex parte*" Order (Appendix D), May 01, 1991, which was overturned and remanded by the Michigan Court of Appeals, February 23, 1993. On August 31, 1995, Petitioner mistakenly petitioned the U.S. District Court for certiorari of the Michigan Supreme Court Order. The U.S. District Court Order (Appendix E), September 14, 1995, dismissed the certiorari petition, stating: "*WHEREAS the United States Supreme Court has exclusive jurisdiction to review decisions from State Supreme Courts on constitutional grounds under Title 28 United States Code Section 1257*".

STATEMENT OF JURISDICTION

Petitioner seeks review of the Michigan Supreme Court Order (Appendix A), August 28, 1995, the Michigan Court of Appeals Order (Appendix B), May 23, 1995, and the Michigan trial court Order (Appendix C), December 27, 1993. Petitioner invokes certiorari jurisdiction conferred on this Court by 28 U.S.C. 1254(1) and 1257. Jurisdiction is also based upon 28 USC 1331 and 28 USC 1343, because there are federal questions involved.

STATUTES INVOLVED

28 USC 1331 and 28 USC 1343, provide relief for: "*The deprivation, under color of State law, statute, ordinance, regulation, custom or usage, of rights and privileges secured by the Constitution of the United States providing for equal rights within the jurisdiction of the United States*".

STATEMENT OF THE CASE

Petitioner would first establish that *PARENTAL RIGHTS ARE FEDERALLY PROTECTED* by the U.S. Constitution's First, Fifth, Ninth, and Fourteenth Amendments, and beyond dispute that *FAMILY LIFE IS A FUNDAMENTAL LIBERTY INTEREST*. Among the most important of the liberties accorded this special treatment is the freedom of a parent and child to maintain, cultivate, and mold their ongoing relationship.

THE LAW - FEDERAL CASES - Right of parents to the care, custody and to nurture their children is of such character that it cannot be denied without violating those fundamental principals of liberty and justice which lie at the base of all our civil and political institutions, *AND SUCH LIBERTY RIGHT IS FUNDAMENTAL AND PROTECTED BY OUR CONSTITUTION*. Santosky v Kramer, 455 U.S. 745, 753 (1982); Quilloin v Walcott, 434 U.S. 246, 255 (1978); Smith v Organization of Foster Families, 431 U.S. 816, 842 (1977); Moore v City of E. Cleveland, 431 U.S. 494, 499 (1977); Cleveland Bd. of Educ. v LaFleur, 414 U.S. 632, 639-40 (1974); Stanley v Illinois, 405 U.S. 645, 651-52 (1972); Prince v Massachusetts, 321 U.S. 158, 166 (1944); Pierce v Soc. of Sisters, 268 U.S. 510, 534-35 (1925); Meyer v

Nebraska, 262 U.S. 390, 399 (1923); Zablocki v Redhail, 434 U.S. 374, 383, 386 (1978); Skinner v Oklahoma, 316 U.S. 535, 541 (1942); Carey v Population Servs. Int'l, 431 U.S. 678, 685 (1977); Roe v Wade, 410 U.S. 113, 153-54 (1973); Doe v Irwin, 441 F. Supp. 1247, U.S. Dist. Ct. of Michigan (1977).

The parent-child relationship is a liberty interest protected by the Due Process Clause of the 14th Amendment. Bell v City of Milwaukee, 746 F.2d 1205, 1242-45, S.C. Ct. App 7th Circuit (1985).

Parent's interest in custody of their children is liberty interest which has received considerable constitutional protection; parent who is deprived of custody suffers thereby grievous loss and such loss deserves extensive due process protection. In Interest of Cooper, 621 P.2d 437, 5 Kansas App. Div. 2d 584 (1980)

"Father enjoys the right to associate with his children which is guaranteed by this amendment (1st) as incorporated in Amendment 14, or which is embodied in the concept of 'liberty' as that word is used in the due process clause of 14th Amendment and equal protection clause of 14th" Mabra v Schmidt, 356 F.Supp. 620, U.S. Dist. Ct. Wisc. (1973).

Parents have fundamental constitutionally protected interest in continuity of legal bond with their children. Matter of Delaney, 617 P.2d 886, Oklahoma (1980).

"No bond is more precious and none should be more zealously protected by the law as the bond between parent and child". Carsen v Elrod, 411

F.Supp. 645, 649, U.S. District Court Eastern Dist. Virginia (1976).

The United States Supreme Court noted that a parent's right to "*the care, custody, management and companionship*" of children is a right "*far more precious*" than any property right. May v Anderson, 345 US 528, 533; 73 S Ct 840, 843, (1952).

The Liberty Interest and integrity of the family encompass an interest in retaining both custody and association with one's children. Santosky v Kramer, 102 S.Ct. 1388 (1982).

EX PARTE STATE ORDER CONFLICTS WITH CONSTITUTIONAL, STATUTE, AND CASE LAW

The Order (Appendix D), May 06, 1991, abolished the Petitioner's established (1983) child custody, by "*ex parte*", without notice, opportunity to be heard, or service of the Order. This process violated liberty interest in family life contrary to Constitutional, case law, and non-discretionary statute law. There was no hearing. Petitioner-father did not know this Order existed. The unlawful Order is dated May 06, 1991, but did not appear in the trial court Clerk's file until years later. It was exposed when it, and three other Orders of this Court (hearings held August 15, 1991, September 23, 1991, December 05, 1991) were overturned and remanded by the Michigan Court of Appeals, No. 147999, February 23, 1993, whose decision found:

"We reverse and remand for further proceedings ..... Defendant, who was awarded joint custody of the children in the judgment of divorce, had been deprived this custody without the benefit

of hearing on the matter since May 06, 1991. To further exacerbate the situation defendant was deprived of all visitation with his children as of early June 1991. Although the trial court addressed several matters regarding defendant's right to visitation, as of the filing of defendant's motion to reinstitute custody on December 5, 1991, no action had been taken on either party's petitions regarding custody. Thus, seven months had elapsed since defendant's joint custody had been suspended without the benefit of a hearing on the matter. This lapse was much too long. Circuit court custody disputes and actions are to have precedence for hearing and assignment for trial over other civil actions. MCL 722.26; MSA 25.312(1). Moreover, a hearing on a custody issue must be held within fifty-six days after filing of a notice that a custody hearing is requested. MCR 3.206(F)(1). Mann v Mann, 190 Mich App 526; 476 NW2d 439 (1991) ..... we order an immediate hearing be held ..... Reversed and remanded"

"Defendant's counsel appears to have overlooked the May 6, 1991, Order PROVIDING THAT CUSTODY BE CHANGED TO PLAINTIFF, and that defendant be afforded "reasonable" visitation, because defendant's petition for show cause refers to a violation of defendant's visitation rights pursuant to the judgment of divorce rather than the May 6, 1991 order"

From the Court of Appeals ruling, Petitioner-father first learned that his custody rights had been abolished by "ex parte" back in May of 1991, without notice, opportunity to be heard, or service of the Order. However, instead of adjudicating relief to a prevailing Petitioner, the Court of Appeals simply reversed, remanded

and ordered that an "*immediate hearing be held*". The state trial court did not fairly comply, as the "*immediate hearing*" ordered was not held until eight months later, on November 01, 1993.

ANOTHER UNLAWFUL ORDER FROM THAT STATE COURT

The November 01, 1991, hearing produced a December 27, 1993, Order (Appendix C). This state trial court again abolished an established (1983) child custody in blatant conflict of statute law. MCL 722.27, MCR 2.517, and MSA 25.312(7)(c) provide there is a non-discretionary, statutorily mandated duty to make "findings of fact and conclusions of law", with "*clear and convincing evidence*" burden of proof before altering an established child custody, depriving parental rights. The statutes provide:

> "The court *shall not modify or amend* it's previous judgments or orders or issue a new order so as to change the established custodial environment of the child unless there is presented "*clear and convincing evidence*" that this is in the best interests of the child".

The Order (Appendix C) does not contain any statutorily mandated "*clear and convincing evidence*" burden of proof. The Court's November 22, 1993, Opinion articulated: "*The burden of proof is preponderance of the evidence*"

In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a "*preponderance*" standard is substantial and the countervailing governmental interest favoring that standard is comparatively slight. Evaluation of the three

factors compels the conclusion that use of a fair "*preponderance of the evidence*" standard is inconsistent with due process.

Michigan has concluded that a "*clear and convincing evidence*" standard of proof strikes the fair balance between the rights to the natural parents and the State's legitimate concerns. Such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process.

The Order (Appendix C) again abolished the Petitioner's established (1983) child custody in blatant conflict with ample decisions of federal and state case law providing that no parent may be deprived of parental liberty rights without "*clear and convincing evidence*" Gordon v Gordon, 13 Tulsa L.J. 802; Lassiter v Dept. of Social Services, 452 US 18, 101 S.Ct. 2153, 68 L.Ed. 2d., 640 (1981); Mann v Mann, 190 Mich App 26; Rozek v Rozek, Mich. CA 157262, Dec 29, 1993; Santosky v Kramer, 102 S.Ct.1388 (1982); Schwiesow v Schwiesow, 406 NW Rep 2d 878; 159 Mich App 548; Stanley v Illinois, 405 US 645, 92 S.Ct. 1208, 31 L.Ed. 2d. 551 (1972); Stringer v Vincent, 161 Mich App 429, 434: 411 NW 2d 474 (1987); Wolfe v Howatt, 119 Mich App 10 (1982).

MICHIGAN COURT OF APPEALS AFFIRMS THE MICHIGAN TRIAL COURT

The Michigan Court of Appeals Order (Appendix B), May 23, 1995, affirmed the Order of the Michigan Trial Court (Appendix C).

STATE SUPREME COURT DENIED APPELLATE REVIEW

The Michigan Supreme Court Order (Appendix A), August 28, 1995, denied Petitioner appellate review of the Michigan Court of Appeals Order (Appendix B), and the Michigan trial court Order (Appendix C).

Petitioner has the right to timely state appellate review of judicial processes that violate Petitioners rights and liberty interests, rulings that are "*in error of the law*". But the Michigan Supreme Court articulated: "*we are not persuaded that the questions presented should be reviewed by this Court*".

STATE DOES NOT ENFORCE CONSTITUTIONALLY PROTECTED ONGOING LIBERTY RIGHTS

Petitioner is unable to enjoy his constitutionally guaranteed liberty interest right to family life through freedom of association (protected by the First, Fifth, Ninth, and Fourteenth Amendments, U.S. Constitution) because State authorities will not enforce provisions of state court Orders that provide for parenting time. State court ordered parenting time is denied to the Petitioner-father on an ongoing basis. Affidavit (Appendix F).

Langton v Maloney, 527 F.Supp. 538, U.S. Dist. Ct. Connecticut, (1981); Wise v Bravo, 666 F.2d 1328, 1338, 10th Cir. (1981); Ruffalo v Civiletti, 539 F. Supp. 949, 952, W.D. Mo. (1982), held "*visitation rights are entitled to due process protection* (substantive as well as procedural), *at least when the challenged governmental interference is of a serious, continuing nature*".

In Armstrong v Manzo, 380 U.S. 545, 550 (1965), the Court took for granted that the interest of a divorced father in the preservation of his visitation rights is a "liberty interest" sufficient to trigger the application of procedural due process doctrine.

Parenting time is a constitutional right, inherent in the "General Welfare" clause of the Constitution's Preamble, and is an inalienable right (pursuit of happiness) from the Declaration of Independence, enforceable in federal courts. Mabra v Schmidt, 356 F. Supp. 620.

Constitutional interest in the development of parental and filial bonds is manifested in the reciprocal rights of parent and child to one another's "companionship". Parham v J.R., 442 U.S. 584, 602-04 (1979); Ginsberg v New York, 390 U.S. 629, 939 (1968); Pierce v Society of Sisters, 268 U.S. 534-35; Meyer v Nebraska, 262 U.S. at 401; Prince v Massachusetts, 321 U.S. at 166; Wisconsin v Yoder, 406 U.S. at 233; Stanley v Illinois, 405 U.S. at 651; Duchesne v Sugarman, 566 F.2d at 825.

As long as both parents are fit, the state should seek maximum parenting time for a non-custodial parent, to maintain open and meaningful access to both parents. The state's non-enforcement of parenting time is not the "meaningful contact" that maintains a viable parent-child relationship in a post-divorce situation, nor is it equal protection of our laws. The State registers no gain towards its

declared goal of "*best interest of the children*" when it separates children from the custody of fit parents. Indeed, McPherson is a fit father, and the State spites its own articulated goal of "*best interests of the children*" when it separates him from his family life in the manner it is being done.

STATE CANNOT INTERFERE WITH CUSTODIAL RIGHTS ABSENT DUE PROCESS PROTECTIONS

The State must bear a heavy burden of proof in terminating parental rights, a fundamental liberty interest of parents in the care, custody, and management of their child. Parents retain a vital interest in preventing the irretrievable destruction of their family life. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

"*If anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into on going family affairs*" Santosky v Kramer, 102 S.Ct. 1388, 455 U.S. 745 (1982).

Governmental action may withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest. Shapiro v Thompson, 394 U.S., at 634; United States v Jackson, 390 U.S. 570, (1968); Sherbert v Verner, 374 U.S. 398, (1963) And once it be determined that a burden has been placed

upon a constitutional right, the onus of demonstrating that no less intrusive means will adequately protect compelling state interests is upon the party seeking to justify the burden. See: Speiser v Randall, 357 U.S. 513, (1958). It is clear that the language of the Fourteenth Amendment, which forbids a State to "*deny to any person within its jurisdiction the equal protection of the laws*", applies on its face to all assertions of state power, however made.

"*State intervention to terminate [such a] relationship ... must be accomplished by procedures meeting the requisites of the Due Process Clause*" Santosky v Kramer, 455 U.S. 745, 753 (1982); Lehr v Robertson, 463 U.S. 248, 257-58 (1983).

No state can deprive any person of life. liberty or property without due process of law nor deny any person the equal protection of the laws. Kelson v Springfield, 767 F.2d. 651 (U.S. Ct. App. 9th Circuit 1985).

Santosky v Kramer, 455 U.S., held that the interest of a parent, in avoiding elimination of "*rights ever to visit, communicate with, or regain custody of the child*" is important enough to entitle him to the procedural protections mandated by the Due Process Clause.

REASONS FOR GRANTING THE WRIT

I

THE STATE'S JUDICIAL RULINGS DENY LIBERTY RIGHTS *"IN ERROR OF THE LAW"* CONTRARY TO CONSTITUTIONAL, CASE, AND NON-DISCRETIONARY STATUTE LAW. Petitioner has a right to timely, unbiased, and fair tribunal for adjudication of liberty interest disputes and requests for relief. Michigan Judicial Cannons and federal constitutional authority require the State to protect liberty interests, and not issue judicial rulings containing provisions which jeopardize both the appearance and substance of fair and impartial consideration.

Petitioner "*reasonably expects*" equal protection of our laws, in that, liberty interest in family life, familial and parental relationships, should be secured in the most basic way by the State government. Instead, State trial and appellate court Orders deny procedural protections, as federally protected liberty rights are abridged or denied in violation of United States Code. State court Orders abolish Petitioner's established child custodial environment, deprive due process immunities, defenses and appeal rights, and
equal protection, and invaded, without "*clear and convincing*" reasons, federally protected father-child familial relations and a physical custodial and nurturing relationship.

II

THE STATE SUPREME COURT DENIED APPELLATE REVIEW OF JUDICIAL RULINGS THAT ARE "*IN ERROR OF THE LAW*". Petitioner has a right to timely state appellate review of judicial processes that violate liberty interests and are "*in error of the law*". The respondent State creates the need for requests for Federal review, by refusing to follow constitutional, case, and statute law, then by refusing State Supreme Court appellate review.

III

THE STATE DENIES EQUAL PROTECTION BY NOT ENFORCEING ONGOING LIBERTY RIGHTS. Petitioner is unable to enjoy constitutionally guaranteed liberty right to family life through freedom of association, as State authorities deny equal protection by refusing to enforce state court Orders that provide for the liberty right of parenting time (Appendix F).

IV

PETITIONER HAS A "*REASONABLE EXPECTATION*" THE FEDERAL GOVERNMENT WILL VINDICATE CONSTITUTIONAL RIGHTS BEING VIOLATED BY THE STATE. Since parental rights are Federally protected by the U.S. Constitution's, First, Fifth, Ninth, and Fourteenth Amendments and beyond dispute that family life is a fundamental liberty interest, the familial and parental relationships between petitioner-father Douglas McPherson and his children should be secure in the most basic way

by our Federal Government. This family is at great risk of loosing a valuable father/child relationship. Reversal of the State's clear, legal error, is essential, before it does more irreparable damage, over time, denying this family some very fundamental rights. Time is of the essence in a precious parent/child relationship. Petitioner "*reasonably expects*" that liberty interest in family life, familial and parental relationships, should be secured in the most basic way by the United States Government when the State intentionally or negligently denies said protections.

Concerns for comity between the federal and state court systems should not cause the federal courts to "turn a blind eye" to the unconstitutional evisceration and invasion of rights of Michigan domestic relations litigants. Where the state does not have "clean hands" regarding violations of federal constitutional rights, comity concerns should take a "back seat" to the assumption of Federal Court intervention over violations of federally guaranteed liberties.

V

THE FEDERAL GOVERNMENT SHOULD MITIGATE THE "*FUTURE DAMAGE TO OTHERS*" OF UNCONSTITUTIONAL STATE JUDICIAL DECISIONS, DENIAL OF APPELLATE REVIEW AND NON-ENFORCEMENT OF ONGOING LIBERTY RIGHTS. A compelling reason to proceed is the well known, "*Future Damage to Others*" doctrine which recognizes it is essential for the Federal Court to review and correct state constitutional depravation to deter and discontinue intentional or negligent violations.

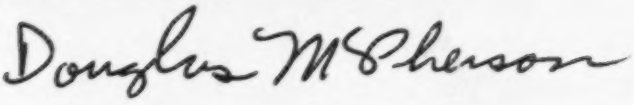
CONCLUSION

Certiorari of the record will establish that the respondent state has abridged due process and equal protection of the law, as state Orders were adopted through a process and/or in a substantive adjudicative outcome that violated Petitioners liberty interest in family life, while liberty interest of ongoing rights of association are not enforced, and there is a denial of appropriate State Supreme Court appellate review.

As the state respondents actions do not comport to statute law, case law, or common law principles, Petitioner has no plain, speedy, and adequate remedy other than relief sought in this petition. Unless respondent's orders are reversed and stayed by order of this Court, petitioner will sustain more immediate, ongoing, and irreparable damage.

Douglas McPherson, petitions for a writ of certiorari to vacate the judgment of the Michigan Supreme Court, August 28, 1995; Michigan Court of Appeals, May 23, 1995; and the Michigan Trial Court, December 27, 1993. He requests injunctive relief against all state Respondents, to be enjoined from engaging in now and in the future, the deprivation of Federal rights as outlined in this brief. He requests appointment of a Federal Special Prosecutor to investigate for criminal civil rights violations. He also requests any other relief that is appropriate and just.

January 15, 1996
Respectfully submitted,



Douglas McPherson, In Propria Persona
16718 Ingersoll Road
Lansing, MI 48906
(517) 321-6201

FRANK J. KELLEY, MICHIGAN ATTORNEY GENERAL
DONALD S. MCGEHEE (P37489)
Counsel of Record for Respondent State Judges
P.O. Box 30217
Lansing, MI 48909
(517) 373-6096

CATHERINE A. JACOBS (P32996)
Counsel of Record for JUDITH E. MCPHERSON
232 S. Capitol Ave., Suite 1000,
Lansing, MI 48933
(517) 482-2400

APPENDIX

Appendix A --- Order, Michigan Supreme Court, August 28, 1995..... A-1

Appendix B --- Order, Michigan Court of Appeals, May 23, 1995..... A-2

Appendix C --- Order, Michigan Trial Court, December 27, 1993 ..... A-3

Appendix D --- "ex parte" Order, Michigan Trial Court, May 06, 1991..... A-6

Appendix E --- Order, U.S. District Court, September 14, 1995..... A-7

Appendix F --- Affidavit of Douglas McPherson, ... A-8

Appendix A
Order, Michigan Supreme Court
August 28, 1995

STATE OF MICHIGAN
IN THE SUPREME COURT

Case No: 103240

Judith E. McPherson, Plaintiff-Appellee,
v
Douglas C. McPherson, Defendant-Appellant.

ORDER

Entered: August 28, 1995

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

August 28, 1995

"s/ JACQUELINE B. MACKINNON"
Deputy clerk

A-2
Appendix B
Order, Michigan Court of Appeals
May 23, 1995

STATE OF MICHIGAN
COURT OF APPEALS

Docket # 174435

Judith E. McPherson, Plaintiff-Appellee,
v
Douglas C. McPherson, Defendant-Appellant.

ORDER

The Court orders the motion for rehearing is DENIED for lack of merit in the grounds presented. It is further ordered the motion for actual and punitive damages is DENIED.

May 23, 1995

"s/ ELLA WILLIAMS"
Chief Clerk

A-3
Appendix C
Order, Michigan Trial Court
December 27, 1993

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF EATON

File No. 82-409-DM
Honorable Thomas S. Eveland

Judith E. McPherson, Plaintiff,
v
Douglas C. McPherson, Defendant.

ORDER

The matter, having come before the Court, all parties of record having been given an opportunity to be heard, the Court being fully advised of the premises herein, and an opinion having been rendered:
IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Judith E. McPherson shall have the sole custody of the minor children of the parties to-wit:

Patrick McPherson, born April 26, 1979, and
Rachel McPherson, born March 17, 1981

2. Based upon the desires of the children and the recommendation of the guardian ad litem, the father, Douglas McPherson, shall have visitation on alternate holidays, alternate Saturdays from 9:00 a.m. until 6:00 p.m., and every other Monday from 6:00 p.m. until 8:00 p.m.;

3. The visitation schedule will be expanded as the counseling continues and as the counsellor recommends;

4. The visitation schedule will be reviewed by the Court after (5) months of this date upon written request of either party;

5. The matter is referred to the Eaton County Friend of the Court for a recommendation for child support based upon the present financial situation of the parties. The Defendant's obligation shall be based upon his ability to earn not on his current earnings;

6. In the interim, the Defendant shall pay the sum of $50.00 per week through the Eaton County Friend of the Court commencing Friday, November 26, 1993 until further order of the Court;

7. The Defendant shall follow the instructions of Dr. Israel with regard to the medication of the minor child, Patrick McPherson;

8. The minor child, Patrick McPherson, shall be allowed to take his medication while with Defendant in order to allow the child to function socially;

9. The minor child, Patrick McPherson, shall be evaluated by the MSU Clinic for Attention Deficit/Hyperactivity Disorder. The cost of the evaluation will be paid by whatever insurance is available and any cost not covered by insurance will be divided equally between the parties;

10. The parties shall encourage the participation in music and other extra curricular activities by the minor children and shall provide latitude for these activities during visitation times;

11. The parties and minor children shall participate in counseling sessions with Sara Stech, A.C.S.W.. The fees of Sara Stech shall be paid by whatever insurance is available and any of her fees not covered by insurance shall be divided equally between the parties;

12. The Defendant shall pay to Plaintiff the sum of $714.79 which represents one-half (1/2) of the medical bills submitted by Plaintiff with the exception of bills for Dr. Scheurer;

13. The fees of Robin L. Omer, guardian ad litem appointed by the Court, shall be divided equally between the parties

12/27/93

"s/ THOMAS S. EVELAND"
Honorable

(footnote) This trial Court's Opinion issued November 22, 1993, articulating: "The burden of proof is preponderance of the evidence"

A-6
Appendix D
"*ex parte*" Order, Michigan Trial Court
May 06, 1991

STATE OF MICHIGAN
56th JUDICIAL CIRCUIT
EATON COUNTY

File No. 82-409-DM
Date of session: May 23, 1991
Circuit Court Judge: Judge Hocking

Judith E. McPherson, Plaintiff,
v
Douglas C. McPherson, Defendant.

ORDER

THE COURT ORDERS:

Referral to the Friend of the Court for:
investigation regarding: custody,
visitation, support.

Visitation: a change in visitation as
described below (see Petition dated 4/3/91)

Change of custody as described below
(see Petition dated 4/3/91)

5-6-91

"s/ G. MICHAEL HOCKING"
Circuit Court Judge

(footnote by Douglas McPherson) *This Order is dated May 06, 1991, and "Date of session" May 23, 1991, but there is no record of any hearing and it did not appear in the trial court Clerk's file until years later.*

Appendix E
Order, U.S. District Court
September 14, 1995

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:95-CV-125

Douglas C. McPherson, Petitioner,
v
JAMES H. BRICKLEY, et al., Respondents.

ORDER

WHEREAS Petitioner Douglas C. McPherson has filed a petition in this Court seeking review of a state court decision based on constitutional grounds;

WHEREAS the United States Supreme Court has exclusive jurisdiction to review decisions from State Supreme Courts on constitutional grounds under Title 28 United States Code Section 1257;

IT IS HEREBY ORDERED that this Petition is DISMISSED pursuant to Federal Rule of Civil Procedure 12(h).

September 14, 1995

"s/ RICHARD ALAN ENSLEN"
Chief Judge

A-8
Appendix F
Affidavit of Douglas McPherson
January 15, 1996

I, Douglas McPherson, have been sworn, and if called as a witness can testify about the following facts:

1. That I am unable to enjoy my liberty interest in the right to family life through freedom of association, constitutionally protected by the First, Fifth, Ninth, and Fourteenth Amendments, U.S. Constitution, and well-founded in ample case and statute law.

2. That my right to family life and parenting time is unlawfully denied whenever my parent/child exposure is withheld by anyone and/or when state authorities do not enforce provisions of state court ordered parenting time to associate with my two natural children, Patrick Douglas McPherson and Rachel Elizabeth McPherson. This liberty right has been denied to me on the following occasions:

June 10, 1991, ***THROUGH*** September 04, 1993, August 29, 1993, Through, 1993, November 22, 1993, January 31, 1994, February 02, 1994, May 07, 1994, May 21, 1994, June 20, 1994, July 02, 1994, July 16, 1994, July 18, 1994, July 30, 1994, August 01, 1994, August 13, 1994, August 27, 1994, September 10, 1994, September 12, 1994. September 24, 1994, September 26, 1994, October 08, 1994, October 10, 1994, October 22, 1994, October 24, 1994, November 05, 1994. November 07, 1994, November 19, 1994, November 21, 1994, November 24, 1994, December 03, 1994, December 05, 1994, December 17, 1994, and December 19, 1994, ***THROUGH THE PRESENT***.

3. I am not allowed to maintain the parent/child contact that is essential to "retain a vital interest in preventing the irretrievable destruction of my family life" resulting in an alienationfrom, a diminutionin the qualityof, and not being permitted to have a relationship with Patrick and Rachel.

4. That I will continueto seek the assistance of both the United States courts and my venue within the Common Law system, to protect, oversee, and intervene in the above cited matters.

This concludes my affidavit

January 15, 1996 Douglas McPherson

Douglas McPherson

NO. 95-1157 (2)

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

Douglas McPherson, In Propria Persona,
Petitioner,
v

JAMES H. BRICKLEY, et al.,
Respondents.

Supreme Court, U.S.
FILED
NOV 22 1995
CLERK

Petition for Writ of Certiorari
to the Michigan Supreme Court

SUPPLEMENTAL APPENDIX

Douglas McPherson, In Propria Persona
16718 Ingersoll Road
Lansing, MI 48906
(517) 321-6201

FRANK J. KELLEY, MICHIGAN ATTORNEY GENERAL
DONALD S. MCGEHEE (P37489)
Counsel of Record for Respondent State Judges
P.O. Box 30217
Lansing, MI 48909
(517) 373-6096

JUDITH E. MCPHERSON, in pro per
830 W. Main Street
Grand Ledge, MI 48837

8 pp

Supplemental Appendix G
Opinion, Michigan Court of Appeals
March 22, 1995

STATE OF MICHIGAN
COURT OF APPEALS

Docket # 174435

Judith E. McPherson, Plaintiff-Appellee,
v
Douglas McPherson, Defendant-Appellant.

Before: Holbrook, Jr., P.J., and Jansen and O'Connell, JJ.

PER CURIAM

Defendant appeals as of right the order granting plaintiff sole physical custody of the parties' two children. The factual history underlying this case is set forth in this Court's February 23, 1993, unpublished per curiam opinion (Docket No. 147999). Defendant here challenges the procedures used by the trial court in reaching its decision to award plaintiff sole custody of the children. We affirm.

Being dispositional in nature, the ultimate decisions in child custody cases are reviewed de novo. Overall v Overall, 203 Mich App 450, 454; 512 NW2d 851 (1994). However, this Court's review is also limited as stated in MCL 722.28; MSA 25.312(8), which provides that "all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue."

Defendant first contends that the trial court committed clear legal error by altering an established custodial environment without clear and convincing evidence that such alteration is in the best interests of the children. MCL 722.27(1)(c); MSA 25.311(1)(c). However, the trial court expressly found that in the present case no sole established custodial environment had existed previously with either parent. In such a situation, "alteration" of an environment does not occur, and the proper evidentiary standard is preponderance of the evidence. Thames v Thames, 191 Mich App 299, 304-305; 477 NW2d 496 (1991). The court properly applied this standard.

Defendant does not attack the court's factual finding that no sole established custodial environment existed. However, conducting a de novo review, Overall, supra, we are not, in light of the record, persuaded that the court's determination in this respect was implausible. Bowers v Bowers, 190 Mich App 51, 53; 475 NW 2d 394 (1991).

Defendant next suggests that evidence favoring plaintiff has been "created" during the time she has had custody since entry of the order appealed. However, since we have found no error on the part of the trial court in applying the preponderance standard, this is immaterial. Further, even were a new determination of the best interests of the children appropriate at this time, defendant has failed to indicate what this "created" evidence is.

Defendant also alleges some type of bias on the part of the trial court. By failing to cite authority to support his argument, defendant has waived this issue. Winiemko v Valenti 203 Mich App 411, 415; 513 NW2d 181 (1994). Additionally, the record does not support

these allegations.

This Court need not reach the issue of alleged factual inadequacies below where defendant sought no adjournment and appears to have accelerated the proceedings below as much as he was able. A party may not seek reversal "on the basis of an error that the party caused by either plan or negligence." Detroit v Larned Associates, 199 Mich App 36, 38; 501 NW2d 189 (1993).

Finally, since we find no error requiring reversal, defendant's request that future proceedings be heard by a different judge is moot. To the extent that defendant's allegations of error are not directly addressed above, we find them to be without merit.

Affirmed.

/s/Donald E. Holbrook, Jr.
/s/Kathleen Jansen
/s/Peter D. O'Connell

A-13
Supplemental Appendix H
Opinion, Michigan Court of Appeals
February 23, 1993

STATE OF MICHIGAN
COURT OF APPEALS

Docket # 147999

Judith E. McPherson, Plaintiff-Appellee,
v
Douglas C. McPherson, Defendant-Appellant.

Before: McDonald, PJ., and Gribbs and Sawyer.

PER CURIAM

Defendant appeals from a December 30, 1991, order denying defendant's motion to reinstitute joint custody and awarding costs and attorney fees to plaintiff. We reverse and remand for further proceedings.

Defendant and plaintiff were divorced in 1982. Pursuant to the judgment of divorce plaintiff and defendant shared joint physical and legal custody of their two minor children, Rachel and Patrick. Defendant had the children weekly from 7:30 a.m. to 5:00 p.m. and every other weekend. This arrangement remained satisfactory until April 27, 1991, when plaintiff filed a petition requesting a change of custody. The petition alleged in part that defendant refused to give Patrick medication required to control Patrick's attention deficit hyperactivity disorder. In what appears to be an interim order dated May 6, 1991, the trial court ordered that the matter be referred to the friend of the court for an investigation regarding custody, visitation and support and ordered temporary custody of the children be given to plaintiff with defendant being awarded reasonable visitation.

On or about June 7, 1991, plaintiff began depriving defendant of all visitation with the children. On July 23, 1991, defendant filed a petition to modify custody and visitation and an order for plaintiff to show cause for her failure to provide defendant visitation with the children.* At an August 15, 1991, hearing on defendant's motion to show cause, the trial court, without taking evidence, but after speaking with the children in chambers, orally suspended defendant's visitation based upon defendant's alleged refusal to administer Patrick his medication. Defendant's motion for discontinuation of medication and hearings on both parties' motions for change of custody were delayed because the trial judge was scheduled to act as a visiting judge in another county.

As of September 5, 1991, no hearing on either party's motion for change of custody had been held, notwithstanding defendant's deprivation of visitation since early June. Thus, on September 5, 1991, defendant filed a motion to resume visitation pending a full hearing on the change of custody issue. A hearing on defendant's motion to resume visitation was held on September 23, 1991. Although testimony was taken from both plaintiff and defendant, the trial judge made clear his position that the "hearing" was not a "hearing" per se and was definitely not a hearing with regard to the matter of custody. The trial judge viewed the hearing as a continuation of the visitation issue raised by defendant's failure to administer Patrick's medication and specifically sought testimony on this subject. On October 14, 1991, the court entered a written order again suspending defendant's visitation, and ordering defendant to attend counseling with the children.

Defendant retained substitute counsel and

filed objections to the proposed order that in effect contested the court's suppression of defendant's joint custody without benefit of a full hearing. No hearing was held on the objections. Thereafter, on December 2, 1991, defendant filed a motion and brief in support thereof to reinstitute joint custody. The brief on the motion again challenged the court's modification of custody absent a full hearing. A hearing on defendant's motion to reinstitute joint custody was held on December 5, 1991. The trial judge stated his belief that defendant's motion was "nothing more than an attempt to reargue the motion [for resumption of visitation] that [it had] already heard and ruled on." Thus, because it found no palpable error in its earlier decision, MCR 2.119, the court denied defendant's motion. Moreover, the court, finding the motion to be frivolous and without legal merit, awarded plaintiff costs and attorney fees in the form of sanctions pursuant to MCL 600.2591; MSA 27A 2591. Defendant appeals from the December 30, 1991, written order incorporating these findings.

We reverse the imposition of sanctions in the form of attorney fees and costs. Although perhaps inartfully drawn, we believe defendant's motion to reinstitute joint custody was a valid attempt to bring the issue of custody before the court. Defendant, who was awarded joint custody of the children in the judgment of divorce, had been deprived this custody without the benefit of hearing on the matter since May 06, 1991. To further exacerbate the situation defendant was deprived of all visitation with his children as of early June 1991. Although the trial court addressed several matters regarding defendant's right to visitation, as of the filing of defendant's motion to reinstitute custody on December 5, 1991, no action had been taken on either part

y's petitions regarding custody. Thus, seven months had elapsed since defendant's joint custody had been suspended without the benefit of a hearing on the matter. This lapse was much too long. Circuit court custody disputes and actions are to have precedence for hearing and assignment for trial over other civil actions. MCL 722.26; MSA 25.312(1). Moreover, a hearing on a custody issue must be held within fifty-six days after filing of a notice that a custody hearing is requested. MCR 3.206(F)(1). Mann v Mann, 190 Mich App 526; 476 NW2d 439 (1991).

We therefore vacate that portion of the December 30, 1991, order awarding costs and attorney fees and remand for further proceedings. Assuming a custody hearing has not yet been held, we order an immediate hearing be held on the matter and that both parties be afforded the opportunity to present any evidence pertinent to the question. Applying the factors listed in subsection A through K of MCL 722.23; MSA 25.312(3), the court shall make specific findings of fact and determine what custody arrangement is in the best interests of the children.

Reversed and remanded. We do not retain jurisdiction.

/s/Gary R. McDonald
/s/Roman S. Gribbs
/s/David H. Sawyer

*Defendant's counsel appears to have overlooked the May 6, 1991, order providing that custody be changed to plaintiff, and that defendant be afforded "reasonable" visitation, because defendant's petition for show cause refers to a violation of defendant's visitation rights pursuant to the judgment of divorce rather than the May 6, 1991 order.